

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 779 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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AMBALAL LALOOBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR RA PATEL for Petitioners

MRS VK PARIKH ASSTT. GOVT. PLEADER for Respondent

No. 1, 2

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CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 03/04/97

ORAL JUDGEMENT

Aggrieved by the order dated 2.4.1993 passed by the Deputy Collector, Nadiad fixing Rs.70/- per square metre as market value as the basis for charging premium

for the purpose of conversion of land for non-agricultural purpose, the petitioners have filed this petition challenging legality and arbitrariness of the order.

2. The petitioners are protected tenants of agricultural land bearing survey No.1094/1 and the same was transferred in their favour vide order dated 17.2.1983 and necessary mutation entry Nos.9192, 9193, 9194 and 9195 were made in revenue record. Entry No.8547 has also been effected in the revenue record referring to the permission contemplated under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Act for brief).

3. Thereafter, vide application dated 28.12.1987, the petitioners applied for non-agricultural use as required under Section 43 of the Act and, accordingly, the appropriate authority fixed Rs.70/- per square metre as the prevailing market price for charging premium while granting N.A.Permission.

4. It is the case of the petitioners that, according to sale instances qua the adjoining lands, the market value is Rs.45/- per square metre therefore the market value of the land in question should also be fixed at Rs.45/-.

5. Before considering the rival contentions on merits, it would be worthwhile to refer to the history of the litigation which has brought this case before this court. An identical question had arisen in respect of the same land and the authority had fixed Rs.150/- per square metre as the market value as the basis for charging the amount of premium. However, the order was challenged before the Gujarat Revenue Tribunal at Ahmedabad and the Tribunal setting aside the order remanded the matter to the Deputy Collector for fresh consideration and arriving at market price in light of the observations made therein. In the body of the order, the learned Tribunal has referred to various sale instances in relation to adjoining lands. By and large, the market value varies between Rs.45 to Rs.55 per square metre and therefore relying upon those sale instances, Shri Patel for the petitioners has argued that the land in question is also similarly placed in all respects and the market price cannot be more than Rs.45/- per square metre.

6. It cannot be gainsaid that the market price of agricultural land depends upon the location, fertility

and the type of land whether plain, rocky, with mounds etc. Even in case of two pieces of land just adjacent to each other, one may be more fertile having facilities of irrigation, namely, supply of water by well or canal etc. and the another may not have. In that case, the price of each other cannot be compared as the basis for charging premium. Naturally, the price of one which is more fertile having facilities of irrigation etc. would be much higher than the one which sans all these facilities. In this case, it is true that the sale instances referred to the land bearing survey No.1082 and 1088, but nothing has come on record as to its location, facilities, fertility, boundaries etc. and whether these lands are almost identical to the land in question, namely, the land bearing survey No.1094. In absence of cogent and concrete evidence in this connection, it would not be proper for the authority to rely upon the sale instances of those land for the purpose of fixing market value of land bearing survey No.1094.

7. Mr.Patel for the petitioners has argued that the market price fixed by the Deputy Collector is on much higher side, arbitrary and without considering the material placed before him. But on perusal of the order it appears that before fixing the price, the Deputy Collector already visited and surveyed the site and had also considered sale instances of last five years. Therefore, definitely, the impugned order cannot be said as arbitrary or without any basis.

8. Apart from all these facts, Mrs.Parikh, learned Assistant Government Pleader has argued that during the course of proceedings before the authority negotiations were going on between the parties for fixing market price and at one point of time the Deputy Collector had suggested the market price at Rs.90/- per square metre vide letter dated 30.12.1988. The same was sent by registered post and has been received by the petitioners. In response to that letter, the petitioners vide their letter dated 4.1.1989 had agreed to pay Rs.90/- per square metres as the market price of the land in question and expressed their willingness to pay the amount of premium. The officer is present in the court with all relevant record and both the letters are shown to this court. As directed by Court, the learned A.G.P. has placed xerox copies of the said letters on record. In my view, the reply sent by the petitioners to the Deputy Collector by itself forms the basis for fixation of market value of the land in question. The said reply is unconditional, voluntary and is sent with knowledge that it is to be used in the proceedings pending against them

under Section 43 of the Act. The letter does not suffer from any ambiguity and is not amenable to two inconsistent interpretations or meanings. When confronted with this letter, Mr. Patel for the petitioners has tried to interpret by saying that what was sought to be conveyed was that, if that was the market value, he was prepared to pay. Mr. Patel has also argued that by giving consent the petitioners intended to request the authority to fix market price in accordance with law. In view of unambiguous text of the letter such an interpretation can never be given hence the submission has no force. Thus the petitioners are also estopped from contending otherwise.

9. Despite all these admitted facts, the authority has fixed the market price at Rs.70/- per square metre, that is, less than the price agreed by the petitioners. This circumstance is eloquent enough to suggest that the authority while fixing the price has applied mind, considered the material on record and other sale instances and has fixed the price less than the agreed price by the petitioners only with a view to see that no injustice is caused. Therefore, the petition being devoid of merits deserves to be dismissed. Accordingly stands dismissed. Rule is discharged.

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